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SECOND AMENDED COMPLAINT

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**Fileroom:** LPS - Main Justice

**DJ#:**

**Case Name:**

**Court:** CA C.D. Cal.; 9th Cir.

**Notes:** SCANNED/UNASSIGNED: CALIFORNIA RIVER WATCH V. EASTERN MUNICIPAL WATER DISTRICT

**Double-Sided:**

**Received Date:** 12/4/2015

**Urgent:**

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16 CALIFORNIA RIVER WATCH

17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA

19 CALIFORNIA RIVER WATCH, a  
20 501(c)(3) non-profit, Public Benefit  
21 Corporation,

22 Plaintiff,  
23 v.

24 EASTERN MUNICIPAL WATER  
25 DISTRICT,  
26 Defendant.

CASE NO: 5:15-cv-01079 VAP (SPx)

**CERTIFICATE OF SERVICE OF  
SECOND AMENDED COMPLAINT ON  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY AND UNITED  
STATES DEPARTMENT OF JUSTICE**

DEPT. OF JUSTICE - ENRD  
ENVIRONMENT DIVISION  
15 DEC -4 P 3:07

1 CERTIFICATE OF SERVICE

2 I am employed in the County of Sonoma, State of California. I am over the age of  
3 eighteen years and not a party to the within action. My business address is 100 E Street, Suite  
4 318, Santa Rosa, CA 95404. On the date set forth below, I served the following described  
document(s):

5 **SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL**  
6 **PENALTIES, AND DECLARATORY RELIEF (Environmental - Clean Water Act**  
**33 U.S.C. § 1251, et seq)**

7 on the following parties by placing a true copy in a sealed envelope, addressed as follows:


8 Citizen Suit Coordinator  
9 U.S. Dept. of Justice  
10 Environmental & Natural Resource Division  
11 Law and Policy Section  
12 P.O. Box 7415  
13 Ben Franklin Station  
14 Washington, DC 20044-7415

15 Administrator  
16 U.S. Environmental Protection Agency  
17 Ariel Rios Building  
18 1200 Pennsylvania Avenue, N.W.  
19 Washington, D.C. 20460

20 [X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class  
21 mail, for collection and mailing at Santa Rosa, California, following ordinary business practices.  
22 I am readily familiar with the practices of Law Office of Jack Silver for processing of  
23 correspondence; said practice being that in the ordinary course of business, correspondence is  
24 deposited with the United States Postal Service the same day as it is placed for processing.

25 [ ] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile  
26 machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

27 I declare under penalty of perjury, under the laws of the State of California, that the  
28 foregoing is true and correct, and that this declaration was executed on November 30, 2015 at  
Santa Rosa, California.

29   
30 Kayla Brown

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CALIFORNIA RIVER WATCH  
10

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a  
501(c)(3), non-profit, Public Benefit  
14 Corporation,

15 Plaintiff,

16 v.

17 EASTERN MUNICIPAL WATER  
DISTRICT,

18 Defendant.  
19

Case No.: 5:15-cv-01079 VAP (SPx)

**SECOND AMENDED COMPLAINT  
FOR INJUNCTIVE RELIEF, CIVIL  
PENALTIES, AND DECLARATORY  
RELIEF**

(Environmental - Clean Water Act  
33 U.S.C. § 1251, *et seq.*)

20 CALIFORNIA RIVER WATCH ("RIVER WATCH"), an Internal Revenue Code  
21 Section 501(c)(3) non-profit, public benefit Corporation, by and through its counsel,  
22 hereby alleges:

23 **I. NATURE OF THE CASE**

24 1. This is a citizens' suit for relief brought by RIVER WATCH under the  
25 Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), 33  
26 U.S.C. § 1251 *et seq.*, specifically the citizen's suit provision under CWA § 505, 33  
27 U.S.C. § 1365 to enforce CWA § 301, 33 U.S.C. § 1311, and CWA § 402, 33 U.S.C. §  
28 1342, in order to prevent Defendant EASTERN MUNICIPAL WATER DISTRICT (the

1 “DISTRICT”) from repeated and ongoing violations of the CWA. The specific violations  
2 at issue in this Second Amended Complaint are detailed in the Supplemental Notice of  
3 Violations and Intent to File Suit dated August 31, 2015 (“CWA NOTICE”) made part  
4 of this pleading and attached hereto as **EXHIBIT A**.

5       2. The CWA regulates the discharge of pollutants into navigable waters. The  
6 statute is structured in such a way that discharge of pollutants is prohibited with the  
7 exception of enumerated statutory exceptions under CWA § 301(a), 33 U.S.C. §  
8 1311(a). One such exception authorizes a polluter, which has been issued a permit  
9 pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to  
10 certain conditions. The effluent discharge standards or limitations specified in a National  
11 Pollutant Discharge Elimination System (“NPDES”) permit define the scope of the  
12 authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a  
13 NPDES permit limitation places a polluter in violation of CWA § 505, 33 U.S.C. §  
14 1365.

15       3. The CWA provides that authority to administer the NPDES permitting  
16 system in any given state or region can be delegated by the Environmental Protection  
17 Agency (“EPA”) to a state or regional authority regulatory agency, provided that the  
18 applicable state or regional regulatory scheme under which the local agency operates  
19 satisfies certain criteria under 33 U.S.C. § 1342(b). In California, the EPA has granted  
20 authorization to a state regulatory apparatus comprised of the State Water Resources  
21 Control Board and several subsidiary regional water quality control boards to issue  
22 NPDES permits. The entity responsible for issuing NPDES permits and otherwise  
23 regulating the DISTRICT’s operations in the regions at issue in this Second Amended  
24 Complaint is the Santa Ana Regional Water Quality Control Board (“RWQCB Region  
25 8”).

26       4. The DISTRICT owns and operates the Moreno Valley, Perris Valley, San  
27 Jacinto Valley, and Sun City Regional Water Reclamation Facilities and their associated  
28 collection systems.

1           5.       RIVER WATCH contends the DISTRICT is routinely violating the CWA  
2 by exceeding the discharge prohibitions or limitations in the NPDES Permit under which  
3 the Eastern Municipal Water District Collection System is regulated, specifically,  
4 Regional Water Quality Control Board Order No. R8-2009-0014, NPDES No.  
5 CA8000188 (Waste Discharge Requirements for Eastern Municipal Water District  
6 Regionwide Water Recycling System, Temescal Creek Discharge, Riverside County).

7           As recorded in CIWQS Public SSO Reports, from January 21, 2010 through  
8 August 31, 2015 the Eastern Municipal Water District Collection System has  
9 experienced at least 41 SSOs with a combined volume of at least 1,353,923 gallons,  
10 195,139 gallons of which were reported as having reached surface waters and 96,634  
11 gallons unaccounted for or discharged to other than a surface water. RIVER WATCH  
12 alleges that many of the SSOs reported by the DISTRICT as having been contained  
13 without reaching a surface water did in fact discharge to surface waters, and those  
14 reported as partially reaching surface waters did so in greater volume than stated. The  
15 claim of full containment is further called into question by the fact that some of the  
16 DISTRICT's SSO reports state the estimated start time of the SSO as the time when the  
17 reporting party first noticed the SSO. Studies have shown that most SSOs are noticed  
18 significantly after they have begun. The DISTRICT reports that some of the discharges  
19 reach a storm drain, but fails to determine the accurate amounts which reach a surface  
20 water.

21           Since the volume of SSOs of any significance is estimated by multiplying the  
22 estimated flow rate by the duration, the practice of estimating a later than actual start  
23 time leads to an underestimation of both the duration and the volume. In reporting an  
24 SSO occurring at Keller Road and Meniffee Road on August 29, 2011 (CIWQS Event ID  
25 #770656), the estimated spill start time and agency notification time are both listed as  
26 14:20:00, and the estimated operator arrival time and spill end time are both recorded as  
27 14:38:00. The reported volume of that SSO is 54 gallons; however, given the unlikely  
28 accuracy of the times on the report, it is difficult to consider the stated volume as

1 accurate.

2 The DISTRICT is a permittee under the Statewide General Requirements for  
3 Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ  
4 (“Statewide WDR”) governing the operation of sanitary sewer systems. The Statewide  
5 WDR requires that sewer system operators report SSOs to the CIWQS and include in that  
6 reporting an estimate of the volume of any spill, the volume recovered and the volume  
7 which reached a surface water. The DISTRICT’s reports generally do not indicate what  
8 method was used to estimate the total volume of the spill, which further calls into  
9 question the estimates of volume recovered and volume reaching surface waters. RIVER  
10 WATCH alleges that the DISTRICT is grossly underestimating the incidence and  
11 volume of SSOs that reach surface waters.

12 RIVER WATCH further alleges that the DISTRICT fails to adequately mitigate  
13 the impacts of SSOs. The Statewide WDR mandates that the permittee shall take all  
14 feasible steps to contain and mitigate the impacts of a SSO. The EPA’s *Report to*  
15 *Congress on the Impacts of SSOs* identifies SSOs as a major source of microbial  
16 pathogens and oxygen depleting substances. Numerous critical habitat areas exist within  
17 the areas of the DISTRICT’s SSOs. There is no record of the DISTRICT performing any  
18 analysis of the impacts of SSOs on critical habitat of protected species under the ESA,  
19 nor any record of evaluations of the measures needed to restore water bodies designated  
20 as critical habitat from the impacts of SSOs.

21 The Statewide WDR requires the DISTRICT to take all feasible steps and perform  
22 necessary remedial actions following the occurrence of a SSO, including limiting the  
23 volume of waste discharged, terminating the discharge, and recovering as much of the  
24 wastewater as possible. Further remedial actions include intercepting and re-routing of  
25 wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and  
26 modification of the collection system to prevent further SSOs at the site.

27 One of the most important remedial measures is the performance of adequate  
28 sampling to determine the nature and the impact of the release. As the DISTRICT is

1 severely underestimating SSOs which reach surface waters, RIVER WATCH contends  
2 the DISTRICT is not conducting sampling on most SSOs. As an example, on July 29,  
3 2013, a spill occurred at Adeline Avenue and Eucalyptus Avenue in Moreno Valley from  
4 the DISTRICT (CIWQS Event ID # 797484). The SSO report lists the same amount  
5 (157,430 gallons) for total volume, volume recovered, and volume which reached surface  
6 waters. This incident was noticed and responded to three (3) days after the spill began.  
7 The Mariposa storm channel, a drainage course to the Pacific Ocean, was impacted by  
8 this spill.

9         6. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future  
10 violations, the imposition of civil penalties, and other relief for the DISTRICT's  
11 violations of the CWA as alleged in this Second Amended Complaint.

## 12 **II. PARTIES TO THE ACTION**

13         7. RIVER WATCH is an Internal Revenue Code §501(c)(3) non-profit public  
14 benefit Corporation duly organized under the laws of the State of California, with  
15 headquarters located in Sebastopol, California and offices in Los Angeles, California.  
16 The mailing address of RIVER WATCH's northern California office is 290 S. Main  
17 Street, #817, Sebastopol, CA 95472. The mailing address of RIVER WATCH's southern  
18 California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043. RIVER  
19 WATCH is dedicated to protecting, enhancing and helping to restore the groundwater  
20 and surface water environs of California including, but not limited to, its oceans, rivers,  
21 creeks, streams, wetlands, vernal pools, aquifers, and associated environs, as well as to  
22 educating the public concerning environmental issues associated with these environs.

23         8. Members of RIVER WATCH live in or recreate nearby to the waters and  
24 watersheds affected by the DISTRICT's illegal discharges as alleged herein. Said  
25 members have interests in the waters and watersheds identified in this Second Amended  
26 Complaint, which interests are or will be adversely affected by the DISTRICTS's  
27 violations of the CWA. Said members use the effected waters and watershed areas for  
28 domestic water, recreation, sports, fishing, swimming, hiking, photography, nature



1 walks, and the like.

2 9. RIVER WATCH is informed and believes and on such information and  
3 belief alleges that Defendant DISTRICT is now, and at all times relevant to this Second  
4 Amended Complaint was, a state-government authorized Special District representing  
5 approximately 768,000 people within a 542-square-mile service area with boundaries  
6 from Moreno Valley to Temecula southward, and from Hemet to San Jacinto eastward,  
7 with administrative offices located at 2270 Trumble Road, Perris, California.

8 10. The DISTRICT collects wastewater from homes and businesses within its  
9 boundaries, transporting it to a single regionwide water recycling system connecting four  
10 (4) Regional Water Reclamation Facilities – the Moreno Valley Regional Water  
11 Reclamation Facility, Perris Valley Regional Water Reclamation Facility, San Jacinto  
12 Valley Regional Water Reclamation Facility, and Sun City Regional Water Reclamation  
13 Facility – within the jurisdiction of RWQCB Region 8. The DISTRICT consists of a  
14 5-member Board of Directors, each representing comparably sized populations in a  
15 four-year term.

16 11. The DISTRICT'S wastewater system provides service to a population of  
17 approximately 768,000, and treats more than 50,000 acre feet over the course of a year.  
18 Wastewater from homes and businesses is transported by way of 50 pump stations  
19 connected through 1,727 miles of gravity pipeline that link to a single region-wide water  
20 recycling system connecting 5 Regional Water Reclamation Facilities (the Temecula  
21 Valley Regional Water Reclamation Facilities and its associated collection systems,  
22 operated by the DISTRICT, is not part of this Second Amended Complaint). The pipeline  
23 ultimately discharges advanced, secondary treated effluent into Temescal Creek, Salt  
24 Creek, and the San Jacinto River, tributary to the Santa Ana River.

25 **III. JURISDICTIONAL ALLEGATIONS**

26 12. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with  
27 regard to public participation in the enforcement of the CWA. 33 U.S.C. § 1251(e)  
28 provides, in relevant part:

1 Public participation in the development, revision, and enforcement of any  
 2 regulation, standard, effluent limitation, plan or program established by  
 3 the Administrator or any State under this chapter shall be provided for,  
 encouraged, and assisted by the Administrator and the States.

4 13. Subject matter jurisdiction is conferred upon this Court by CWA §  
 5 505(a)(1), 33 U.S.C. § 1365(a)(1), which states in relevant part,

6 “any citizen may commence a civil action on his own behalf against any  
 7 person . . . who is alleged to be in violation of (A) an effluent standard or  
 8 limitation . . . or (B) an order issued by the Administrator or a State with  
 9 respect to such a standard or limitation.” For purposes of CWA §  
 505(a)(1), 33 U.S.C. 1365(a)(1) the term “citizen” means, “a person or  
 persons having an interest which is or may be adversely affected.”<sup>1</sup>

10 14. Members and supporters of RIVER WATCH reside in the vicinity of, enjoy  
 11 visiting the area, derive livelihoods from, own property near, and/or recreate on, in or  
 12 near and/or otherwise use, enjoy and benefit from the waterways and associated natural  
 13 resources into which the DISTRICT discharges pollutants, or by which the  
 14 DISTRICTS’s operations of the Regional Water Reclamation Facilities adversely affect  
 15 said members’ interests, in violation of CWA §§ 301(a) and 402, 33 U.S.C. §§ 1311(a)  
 16 and 1342. The health, economic, recreational, aesthetic and environmental interests of  
 17 RIVER WATCH and its members may be, have been, are being, and will continue to be  
 18 adversely affected by the DISTRICT’s unlawful violations of the CWA as alleged in this  
 19 Second Amended Complaint. RIVER WATCH and its members contend there exists an  
 20 injury in fact to them, causation of that injury by the DISTRICT’s complained of  
 21 conduct, and a likelihood that the requested relief will redress that injury.

22 15. The beneficial uses identified in the Basin Plan adopted by RWQCB Region  
 23 8 for San Jacinto, Santa Ana, and Santa Margarita Rivers and their tributaries, Murrieta  
 24 Creek and Temescal Creek include, but are not limited to, water contact recreation,  
 25 freshwater habitat for fish, and rare, threatened or endangered species as these terms are

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27 <sup>1</sup> See CWA § 505(g), 33 U.S.C. 1265(g). “For purposes of this section [CWA § 505] the term  
 28 ‘citizen’ means a person or persons having an interest which is or may be adversely affected.”

1 defined by the California EPA and the United States EPA.

2 16. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), notice of the  
3 CWA violations alleged in this Second Amended Complaint was given more than sixty  
4 (60) days prior to commencement of this lawsuit, to: (a) the DISTRICT, (b) the United  
5 States EPA, Federal and Regional, (c) the State of California Water Resources Control  
6 Board, and (d) RWQCB Region 8.

7 17. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Second  
8 Amended Complaint has been served on the United States Attorney General and the  
9 Administrator of the Federal EPA.

10 18. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this  
11 District as the Regional Water Reclamation Facilities and the sites where illegal  
12 discharges occurred, which are the source of the violations complained of in this action,  
13 are located within this District.

#### 14 **IV. STATUTORY AND REGULATORY BACKGROUND**

15 19. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants  
16 from a point source to navigable waters of the United States, or activities not authorized  
17 by, or in violation of an effluent standard or limitation or an order issued by the EPA or  
18 a State with respect to such a standard or limitation including a NPDES permit issued  
19 pursuant to CWA § 402, 33 U.S.C. § 1342. Sewage is specifically identified in the CWA  
20 as a pollutant. The discharge outfalls and sewer lines owned and operated by the  
21 DISTRICT are point sources under the CWA.

22 20. The affected waterways identified in this Second Amended Complaint and  
23 in the CWA NOTICE are navigable waters of the United States within the meaning of  
24 CWA § 502(7), 33 U.S.C. § 1362(7).

25 21. The CWA provides that authority to administer the NPDES permitting  
26 system in any given state or region can be delegated by the EPA to a state or to a regional  
27 regulatory agency, provided that the applicable state or regional regulatory scheme under  
28 which the local agency operates satisfies certain criteria (see 33 U.S.C. § 1342(b)). In

1 California, the EPA has granted authorization to a state regulatory apparatus comprised  
2 of the State Water Resources Control Board and several subsidiary regional water quality  
3 control boards to issue NPDES permits. The entity responsible for issuing NPDES  
4 permits and otherwise regulating the DISTRICT's operations, including the Reclamation  
5 Facilities, and associated sewage collection system at issue in this Second Amended  
6 Complaint is RWQCB Region 8.

7 22. The DISTRICT's Eastern Municipal Water District Collection System is  
8 regulated under RWQCB Order No. R8-2009-0014, NPDES No. CA8000188 (Waste  
9 Discharge Requirements for Eastern Municipal Water District, Regionwide Water  
10 Recycling System, Temescal Creek Discharge, Riverside County). RIVER WATCH  
11 alleges the DISTRICT has committed numerous violations of its NPDES Permit, as  
12 detailed herein and in the CWA NOTICE. All violations of a duly authorized NPDES  
13 Permit are a violation of the CWA. RIVER WATCH alleges the DISTRICT has  
14 committed numerous violations of the Act by discharging a pollutant, sewage, from a  
15 point source, the collection and/or storm drain system, to a water of the United States.

16 23. The Code of Federal Regulations Title 40 § 122.41 (40 CFR § 122.41)  
17 includes conditions, or provisions, that apply to all NPDES permits. Additional  
18 provisions applicable to NPDES permits are found at 40 CFR § 122.42. The DISTRICT  
19 must comply with all of the provisions of its NPDES Permit. Pursuant to 40 CFR §  
20 122.41, any permit non-compliance constitutes a violation of the CWA.

## 21 **V. CLAIMS FOR RELIEF**

### 22 **A. FIRST CLAIM FOR RELIEF**

23 **Pursuant to CWA § 505(a)(1)(B), 33 U.S.C. § 1365(a)(1)(B) –**

24 **Violation of NPDES No. CA8000188 - Collection System Unpermitted Sewage**  
25 **System Overflows (SSOs) as Identified in Defendant's Submissions to**  
26 **CIWQS.**

27 24. RIVER WATCH realleges and incorporates by reference the allegations of  
28 Paragraphs 1 through 23 above including the CWA NOTICE as though fully set forth

1 herein. RIVER WATCH is informed and believes and based upon such information and  
2 belief alleges as follows:

3 25. The DISTRICT has violated and continues to violate the CWA as evidenced  
4 by its wastewater collection system surface discharges of pollutants (raw sewage) from  
5 a point source (the sewer lines) caused by SSOs. RIVER WATCH contends that from  
6 January 21, 2010 through August 31, 2015, the DISTRICT's collection system  
7 experienced at least 41 SSOs from its sewer lines, all of which are point sources under  
8 the CWA, in violation of the following Discharge Prohibitions in Order No.  
9 R8-2009-0014:

- 10 • Discharge Prohibition III.C: "Discharge of wastewater at a location or in a  
11 manner different from those described in this Order is prohibited."
- 12 • Discharge Prohibition III.D: "The bypass or overflow or untreated  
13 wastewater or wastes to surface waters or surface water drainage courses in  
14 prohibited, except as allowed in Standard Provision I.G. of Attachment D,  
15 Federal Standard Provisions."
- 16 • Discharge Prohibition III.E: "The discharge of any substances in  
17 concentrations toxic to animal or plant life is prohibited."

18 **B. SECOND CLAIM FOR RELIEF**

19 Pursuant to CWA § 505(a)(1)(A), 33 U.S.C. 1365(a)(1)(A), Violation of CWA  
20 § 301(a), 33 U.S.C. §1311(a) – Discharge of a Pollutant From a Point Source to  
21 Navigable Waters of the United States, as Identified in Defendant's Submissions to  
22 CIWQS, Without Complying with any Other Section of the Act.

23 26. RIVER WATCH realleges and incorporates by reference the allegations of  
24 Paragraphs 1 through 25, including EXHIBIT A as though fully set forth herein.

25 27. The DISTRICT has violated and continues to violate the CWA as evidenced  
26 by the discharges of pollutants (raw sewage) from a point source (the sewer lines and  
27 storm water collection system) to waters of the United States in violation of CWA §  
28 301(a), CWA, 33 U.S.C. § 1311(a).

1        28. The DISTRICT has self-reported and certified under oath, as evidenced in  
2 CIWQS and its own records, as to 195,139 gallons as reaching a water of the United  
3 States.

4        29. All of these discharges are violations of CWA § 301(a), 33 U.S.C. 1311(a),  
5 in that they are discharges of a pollutant (sewage) from a point source (sewage collection  
6 system) to a water of the United States without complying with any other sections of the  
7 Act.

8        30. The violations of the DISTRICT as set forth in the FIRST and SECOND  
9 CLAIMS FOR RELIEF above are ongoing in nature and will continue after the filing of  
10 this Second Amended Complaint. RIVER WATCH alleges herein all violations which  
11 may have occurred or will occur prior to trial, but for which data may not have been  
12 available or submitted or apparent from the face of the reports or data submitted by the  
13 DISTRICT to the RWQCB Region 8, or to RIVER WATCH prior to the filing of this  
14 Second Amended Complaint. Each of the DISTRICT's violations is a separate violation  
15 of the CWA.

16        31. RIVER WATCH avers and believes, and on such belief alleges, that without  
17 the imposition of appropriate civil penalties and the issuance of appropriate equitable  
18 relief, the DISTRICT will continue to violate the CWA as well as State and Federal  
19 standards with respect to the enumerated discharges and releases. RIVER WATCH  
20 avers, and believes and on such belief alleges, that the relief requested in this Second  
21 Amended Complaint will redress the injury to RIVER WATCH and its members, prevent  
22 future injury, and protect their interests which are or may be adversely affected by the  
23 DISTRICT's violations of the CWA.

24 **VI. PRAYER FOR RELIEF**

25 WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

- 26 1. Declare the DISTRICT to have violated and to be in violation of the CWA.  
27 2. Issue an injunction ordering the DISTRICT to immediately operate its sewage  
28 collection system in compliance with the CWA.

1 3. Order the DISTRICT to perform remedial measures to correct deficiencies in its  
2 management, maintenance, and reporting regarding discharges from its sewage and  
3 stormwater collection systems.

4 4. Order the DISTRICT to pay civil penalties of \$37,500.00 per violation per day for  
5 is violations of the CWA.

6 5. Order the DISTRICT to pay reasonable attorneys' fees and costs of RIVER  
7 WATCH (including expert witness fees), as provided by CWA § 505(d), 33 U.S.C. §  
8 1365(d).

9 6. For such other and further relief as the Court deems just and proper.

10  
11  
12 DATED: November 19, 2015

LAW OFFICE OF DAVID WEINSOFF

13  
14 By: /s/ David J. Weinsoff  
15 David J. Weinsoff  
16 Attorney for Plaintiff  
17 CALIFORNIA RIVER WATCH  
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28

# **EXHIBIT A**



# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402

Phone 707-528-8175 Fax 707-528-8675

lhm28843@sbcglobal.net



***VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED***

August 31, 2015

Paul D. Jones II, P.E., General Manager  
Members of the Board of Directors  
Eastern Municipal Water District  
2270 Trumble Road  
P.O. Box 8300  
Perris, CA 92572-8300

**Re: Supplemental Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Mr. Jones and Members of the Board:

**STATUTORY NOTICE**

This Supplemental Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring throughout Eastern Municipal Water District's water treatment and reclamation facilities ("Facilities") and their associated collections systems. River Watch hereby places Eastern Municipal Water District, hereinafter referred to as the "District," as owner and operator of the Regional Water Quality Control Board Region 8 ("RWQCB-R8") Moreno Valley, Perris Valley, San Jacinto Valley and Sun City Regional Water Reclamation Facilities and associated collection system (hereafter collectively "EMWD RCS"), on notice that following the expiration of 60 days from the date of this Supplemental Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District or amend its current suit, filed in the United States District Court, Central District of California, titled *California River Watch, a 501(c)(3) non-profit, Public Benefit Corporation vs. Eastern Municipal Water District*, Case No.5:15-cv-01079 VAP (SPx), for continuing violations of an effluent

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standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402 pursuant to CWA § 301(a), as the result of alleged violations of permit conditions or limitations in the District's RWQCB-R8 National Pollutant Discharge Elimination System ("NPDES") permit. The District also operates the Temecula Valley Regional Water Reclamation Facilities and its associated collection systems, which is not part of this Supplemental Notice.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that the discharge of pollutants is prohibited with the exception of enumerated statutory exceptions, CWA § 301(a), 33 U.S.C. § 1311(a). One such exception authorizes a polluter, which has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a polluter in violation of the CWA.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the District's operations in the region at issue in this Supplemental Notice is the Santa Ana Regional Water Quality Control Board, identified herein as RWQCB-R8.

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the regional boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with its RWQCB-R8 NPDES permit and the CWA.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

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1. *The specific standard, limitation, or order alleged to have been violated.*

River Watch has identified in this Supplemental Notice the District's violations of the specific standards and limitations of Regional Water Quality Control Board Order No. R8-2009-0014, NPDES No. CA8000188 (*Waste Discharge Requirements for Eastern Municipal Water District, Regionwide Water Recycling System, Temescal Creek Discharge, Riverside County*). A violation of the NPDES permit is a violation of the CWA. In addition the District is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems.

2. *The activity alleged to constitute a violation.*

The NPDES permit standards and limitations being violated are self-explanatory and an examination of the language of the NPDES Permit itself is sufficient to inform the District of its failure to fully comply with the permit requirements. This is especially so since the District is responsible for monitoring its operations to ensure compliance with all permit conditions. River Watch sets forth the following narratives which identify with particularity the activities alleged to be violations. River Watch does so following a review of public records (e.g., the District's Self Monitoring Reports and the California Integrated Water Quality System ("CIWQS" reporting system) relating to operations at the Facilities and associated collection systems. Additional records and other public documents in the District's possession or otherwise available to the District regarding its NPDES permit and collection systems may, upon discovery, reveal additional violations.

As identified above, the District owns and operates the EMWD RCS within the Santa Ana Watershed under the jurisdiction of the RWQCB-R8. River Watch contends that from August 31, 2010 through August 31, 2015 the District violated the following identified requirements of its RWQCB-R8 NPDES permit with regard to the ownership and management of EMWD RCS:

Order No. R8-2009-0014 –

- Discharge Prohibition III.C: "Discharge of wastewater at a location or in a manner different from those described in this Order is prohibited."

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- Discharge Prohibition III.D: “The bypass or overflow of untreated wastewater or wastes to surface waters or surface water drainage courses is prohibited, except as allowed in Standard Provision I.G. of Attachment D, Federal Standard Provisions.”
- Discharge Prohibition III.E: “The discharge of any substances in concentrations toxic to animal or plant life is prohibited.”

A. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is also a well established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system result in discharges to adjacent surface waters via underground hydrological connections. Untreated sewage is discharged from cracks, displaced joints, eroded segments, etc, into groundwater hydrologically connected to surface waters. During the course of discovery River Watch will test surface waters adjacent to sections of the EMWD RCS to determine the location and extent of exfiltration.

It is known throughout the industry that discharges are continuous wherever aging, damaged, and/or structurally defective sewer lines in a collection system are located adjacent to surface waters. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.

Evidence of exfiltration can also be supported by reviewing mass balance data, “inflow and infiltration” (“I/I”) data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the EMWD RCS is a violation of the District’s RWQCB-8 NPDES permit and thus the CWA.

B. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

Sanitary Sewer Overflows (“SSOs”), during which untreated sewage is discharged above-ground from the collection systems prior to reaching the Facilities, are alleged to have occurred both on the dates identified in the CIWQS Interactive Public SSO Reports and on dates when no reports were filed by the District. River Watch contends that from August 31,

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2010 to August 31, 2015, the District has violated its NPDES permit with regards to the EMWD RCS as described herein. The below listed violations are reported by the RWQCB-R8 and evidenced by the CIWQS SSO Reporting Database Records. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

**29** Violations of Order No. R8-2009-0014 as described below:

Discharge Prohibition III.C: "Discharge of wastewater at a location or in a manner different from those described in this Order is prohibited."

**11** Violations of Order No. R8-2009-0014 as described below:

Discharge Prohibition III.D: "The bypass or overflow of untreated wastewater or wastes to surface waters or surface water drainage courses is prohibited, except as allowed in Standard Provision I.G. of Attachment D, Federal Standard Provisions."

**17** Violations of Order No. R8-2009-0014 as described below:

Discharge Prohibition III.E: "The discharge of any substances in concentrations toxic to animal or plant life is prohibited."

Releases Reported. As recorded in CIWQS Public SSO Reports, the EMWD RCS has experienced at least 41 SSOs with a combined volume of at least 1,353,923 gallons. Of the total volume, 195,139 gallons were reported as having reached surface waters, and 96,634 gallons were unaccounted for or discharged to other than a surface water.

The Statewide WDR requires that sewer system operators report SSOs to the CIWQS and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. The District's reports generally do not indicate what method was used to estimate the total volume of the spill, which further calls into question the estimates of volume recovered and volume reaching surface waters. River Watch contends that the District is grossly underestimating the incidence and volume of SSOs that reach surface waters.

The Statewide WDR requires the District to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater

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as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

One of the most important remedial measures is the performance of adequate sampling to determine the nature and the impact of the release. As the District is severely underestimating SSOs which reach surface waters, River Watch contends the District is not conducting sampling on most SSOs. As an example, on July 29, 2013, a spill from the EMWD RCS occurred at Adeline Avenue and Eucalyptus Avenue in Moreno Valley (CIWQS Event ID # 797484). The SSO report lists the same amount (157,430 gallons) for total volume, volume recovered, and volume which reached surface waters. This incident was noticed and responded to 3 days after the spill began. The Mariposa storm channel, a drainage course to the Pacific Ocean, was impacted by this spill.

Discharges to Surface Waters. River Watch's expert believes that many of the SSOs reported by the District as having been contained without reaching a surface water, did in fact discharge to surface waters, and those reported as partially reaching surface waters did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of the District's SSO reports state the estimated start time of the SSO as the time when the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. The District reports that some of the discharges reach a storm drain, but fails to determine the accurate amounts which reach a surface water.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume. In reporting an SSO from the EMWD RCS at Keller Road and Meniffee Road on August 29, 2011 (CIWQS Event ID # 770656) the estimated spill start time and agency notification time are both listed as 14:20:00. The estimated operator arrival time and spill end time are both recorded as 14:38:00. The reported volume of that SSO is 54 gallons, however given the unlikely accuracy of the times on the report, it is difficult to consider the stated volume as accurate.

Estimating Volume. River Watch's expert, following review of the CIWQS reports, has also determined that the District's method for estimating flow rate underestimates the volume of a SSO. The District's reports general do not indicate what method was used to estimate the total volume of the spill, indicating the estimates of volume recovered and

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volume reaching surface waters are inaccurate. River Watch therefore contends that the District is grossly underestimating the incidence and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends the District also fails to adequately mitigate the impacts of SSOs. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The EPA's 'Report to Congress on the Impacts of SSOs' identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within the areas of the District's SSOs. There is no record of the District performing any analysis of the impacts of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

D. Monitoring for Receiving Water Limitations (NPDES Permit Section V.A.)

The San Jacinto, Santa Ana, and Santa Margarita Rivers and their tributaries, which include Murrieta Creek and Temescal Creek, have many beneficial uses as defined in the Basin Plan adopted by RWQCB-R8 including water contact recreation, freshwater habitat for fish, and rare, threatened or endangered species. SSOs reaching these waters cause prohibited pollution by unreasonably affecting these beneficial uses. The District is required by its NPDES Permit to comply with narrative standards as set forth in this Basin Plan when testing by numeric standards would be inadequate or impractical.

River Watch has found nothing in the public record to demonstrate that the District has monitored for and complied with these narrative standards. River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around the San Jacinto, Santa Ana, and Santa Margarita Rivers and their tributaries.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations identified in this Notice is the Eastern Municipal Water District as owner and operator of the Facilities and their associated collection systems as well as the District's employees responsible for compliance with the District's NPDES Permit and the CWA.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records created and/or maintained by or for the District which relate to the Facilities and related activities as described in this Supplemental Notice.

Eastern Municipal Water District of Southern California is located in Perris, California, on the western side of Riverside County, approximately 75 miles southeast of Los Angeles. The District provides services to an area of 542 square miles from Moreno Valley to Temecula southward, and from Hemet to San Jacinto eastward. The District's service area includes the cities of Moreno Valley, Menifee, Murrieta, and Temecula, as well as the unincorporated communities of Good Hope, Homeland, Lakeview, Nuevo, Mead Valley, Murrieta Hot Springs, Quail Valley, Romoland, Valle Vista and Winchester.

The District is governed by a 5-member Board of Directors, each representing comparably sized populations in a 4-year term. The area served by the District includes approximately 18 hospitals, 8 airports, 5 Amtrak stations, 38 colleges/universities, 32 high schools, 31 shopping centers, 34 recreational parks, and over 9 golf courses.

The wastewater system owned and operated by the District provides service to a population of approximately 768,000, and treats more than 50,000 acre feet over the course of a year. Wastewater from homes and businesses is transported by way of 50 pump stations connected through 1,727 miles of gravity pipeline that link to a single regionwide water recycling system connecting 5 Regional Water Reclamation Facilities. The pipeline ultimately discharges advanced, secondary treated effluent into Temescal Creek, Salt Creek, and the San Jacinto River, tributary to the Santa Ana River.

The District is one of the 26-member agencies of the Metropolitan Water District of Southern California ("MWD"), and as a result has access to imported water direct from the MWD. The District imports and sells State Project Water from northern California, and Colorado River Water, both raw and treated, via the Colorado River aqueduct. The District's drinking water is primarily imported from the MWD or from local groundwater supplying approximately 160,000 service connections.



5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined the District's records relating to the Facilities and the associated collection systems as well as records on file with RWQCB-R8 for the period from August 31, 2010 through August 31, 2015 – the range of dates covered by this Supplemental Notice.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, referred to herein as "River Watch." River Watch is an IRC § 501(c)(3) non-profit, public benefit Corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043. River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including the Pacific ocean, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch members residing and/or recreating in the area of the Facilities and the surrounding watershed have a vital interest in bringing the District's operations at the Facilities and associated collection systems into compliance with the CWA.

River Watch has retained legal counsel with respect to the issues raised in this Supplemental Notice. All communications should be directed to:

Jack Silver, Esq.,  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Tel. 707-528-8175  
Email: [lh28843@sbcglobal.net](mailto:lh28843@sbcglobal.net)

David J. Weinsoff, Esq.  
Law Office of David J. Weinsoff  
138 Ridgeway Avenue  
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Tel. 415-460-9760  
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## RECOMMENDED REMEDIAL MEASURES

### 1. DEFINITIONS

- A. *Condition Assessment*: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains, manhole inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the "National Association of Sewer Service Companies." The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.
- B. *Full Condition Assessment*: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within 200 feet of surface waters.
- C. *Surface Water Condition Assessment*: A Condition Assessment of sewer lines in the sewer collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.
- D. *Significantly Defective*: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:
  - 5 – Most significant defect
  - 4 – Significant defect
  - 3 – Moderate defect
  - 2 – Minor to moderate defect
  - 1 – Minor defect

### 2. REMEDIAL MEASURES

River Watch believes the following remedial measures are necessary to bring the District into compliance with the CWA and the Basin Plan, and reflect the biological impacts

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of the District's ongoing non-compliance with the CWA:

A. SEWAGE COLLECTION SYSTEM INVESTIGATION AND REPAIR

- Repair or replacement, within 2 years, of all sewer lines in the District's sewage collection system located 200 feet from surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the past 10 years and were rated as Significantly Defective, or given a comparable assessment.
- Within 2 years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past 10 years.
- Within 2 years after completion of the Surface Water Condition Assessment above, the District shall:
  - ▶ Repair or replace all sewer lines which have been found to be Significantly Defective;
  - ▶ Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system if such defect resulted in a SSO or, if in the District's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced; and
  - ▶ Ensure that sewer pipe segments containing defects with a rating of 3 on the PACP rating system that are not repaired or replaced within 5 years after completion of the Surface Water Condition Assessment are re-CCTV'd every 5 years to ascertain the condition of the sewer line segment. If the District determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the District shall complete the repair or replacement within 2 years after the last CCTV cycle;
- Beginning no more than 1 year after completion of the Surface Water Condition Assessment, the District shall commence a Full Condition Assessment to be completed within 7 years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within 3 years of the rating determination.

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- Implementation in the District's Capital Improvements Plan of a program to provide a Condition Assessment of all sewer lines at least every 5 years. Said program to begin 1 year following the Full Condition Assessment described above.

B. SSO REPORTING AND RESPONSE

Modification of the District's Backup and "SSO Response Plan" to include the following items in its reports submitted to the CIWQS State Reporting System:

- The method or calculations used for estimating total spill volume, spill volume that reached surface water, and spill volume recovered.
- For Category I Spills, creation of a listing of nearby residents or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained (such as from a caller who provides information that brackets a given time that the SSO began).
- Taking of photographs of the manhole flow at the SSO site using the San Diego Method array if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.
- Conducting of water quality sampling and testing whenever it is estimated that 50 gallons or more of untreated or partially treated waste water enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli, and a CAM-17 toxic metal analysis.
  - ▶ The District shall collect and test samples from 3 locations – the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the District will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, perform additional maintenance or cleaning and any other appropriate measures to fix the non-structural defect.

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- Creation of website capacity to track information regarding SSOs or, in the alternative, creation of a link from the District's website to the CIWQS SSO Public Reports. Notification to be given by the District to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
- Completion of human marker sampling on creeks, rivers, wetlands and areas of Temescal Creek, Murrieta Creek, and the San Jacinto, Santa Ana, and Santa Margarita Rivers adjacent to sewer lines to test for sewage contamination from exfiltration.

C. LATERAL INSPECTION/REPAIR PROGRAM

Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

- Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 10 years prior to the transfer;
- The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years;
- A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than 3 years;
- Upon replacement or repair of any part of the sewer lateral;
- Upon issuance of a building permit with a valuation of \$25,000.00 or more; or
- Upon significant repair or replacement of the main sewer line to which the lateral is attached.

D. NARRATIVE STANDARD COMPLIANCE

The District shall develop and implement a means for verifying compliance with the narrative standards in its NPDES permit, specifically Section V. Receiving Water Limitations. A. Surface Water Limitations.

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## CONCLUSION

The violations set forth in this Supplemental Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected communities identified herein. Members of River Watch use the affected watersheds for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource are specifically impaired by the District's alleged violations of the CWA as set forth in this Supplemental Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 (*see also* 40 C.F.R. §§ 19.1-19.4). River Watch believes this Supplemental Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a 60-day notice period to promote resolution of disputes. River Watch encourages the District to contact counsel for River Watch within 20 days of receipt of this Supplemental Notice to initiate a discussion regarding the allegations detailed in this Supplemental Notice.

In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the District is in compliance with the strict terms and conditions of its NPDES Permit and the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends, or to amend its current suit filed in the United States District Court, Central District of California, titled *California River Watch, a 501(c)(3) non-profit, Public Benefit Corporation vs. Eastern Municipal Water District*, Case No. 5:15-cv-01079 VAP (SPx).

Very truly yours,

  
Jack Silver

JS:lhbm

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cc:

Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Executive Director  
Santa Ana Regional Water Quality Control Board  
Region 8  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

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Santa Rosa, CA 95402-5469



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Washington, DC 20044-7415